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No. 87-243

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ANTHONY A. BROWN,

Petitioner,

vs.

OFFICER L. PATTERSON; CITY OF HARVEY; COUNTY OF COOK; and RICHARD J. ELROD,

Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

There are no questions of sufficient significance to require the granting of a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

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OPINIONS BELOW

The opinions below are adequately described in the Petition, except that the Seventh Circuit opinion has been reported at 823 F.2d 167.

STATEMENT

The statement of facts in the Petition adequately sets forth the facts alleged in the dismissed Amended Complaint. In that dismissed pleading, the Petitioner made no

allegation that either Officer Patterson or the City of Harvey ("Respondents") attempted to execute an invalid arrest warrant against him; no allegation that either of these Respondents ever sought any warrant, or had any warrant in hand, valid or invalid, to execute against him; no allegation that either of these Respondents ever knew that Petitioner's name was not on the original warrant. In short, there are no facts alleged from which it can be inferred that these Respondents acted in a constitutionally improper manner at the time of the arrest and detention, or that they knowingly violated any right clearly secured and guaranteed by the Constitution.

ARGUMENT

I.

THE DECISION OF THE COURT OF APPEALS IN THIS CASE IS NOT INCONSISTENT WITH ANY DECISION OF THIS COURT AND THE PETITION RAISES NO QUESTION WORTHY OF THE GRANTING OF A WRIT OF CERTIORARI TO THE COURT OF APPEALS AS DEFINED BY THIS COURT'S RULE 17.

Respondents cannot discern which consideration governing review on certiorari, as set forth in Rule 17 of the Rules of the Supreme Court, Petitioner claims is applicable to the decision of the Seventh Circuit in this case. This action is simply not worthy of certiorari.

In addition to the lack of conflict with any decision of the United States Supreme Court, Petitioner's argument contains factual and logical difficulties which make his purported constitutional claims, which appear to be only superficially raised in the Petition, murky at best.

This Court has recognized that a purported claim resulting from the arrest and detention of the wrong person due to mistaken identity does not state an actionable claim under 42 U.S.C. §1983. *Baker v. McCollan*, 443 U.S. 137 (1979). There, a County Sheriff arrested the plaintiff pursuant to a valid arrest warrant and detained him for three days, despite his protests that he was the wrong man. He was released when the validity of his protests was ascertained. The plaintiff then filed an action against the Sheriff's Department alleging that the detention deprived him of his Fourteenth Amendment rights. This Court began its analysis by finding that absent an attack on the validity of the warrant under which he was arrested, the plaintiff's claim was simply that, notwithstanding his protests of mistaken identity, he was detained in jail for three days. *Baker*, 443 U.S. at 143-144. The Court then held that the Constitution "does not require that only the guilty will be arrested." *Baker*, 443 U.S. at 145. Further, the Constitution imposed no duty on the Sheriff to "investigate independently every claim of innocence" nor to "perform an error-free investigation of such a claim". *Baker*, 443 U.S. at 146. The Court found that the plaintiff's claim did not amount to a deprivation of liberty without due process of law. *Id.*

The fact that the name of the person arrested did not appear on the face of the warrant does not affect the validity of the warrant or impose an affirmative duty on the Respondents to investigate the identity of the person arrested. *United States v. McEachern*, 675 F.2d 618 (4th Cir. 1982). Even this Court has recognized that the arrest of the "wrong person" is proper when arrested reasonably and in good faith pursuant to a valid warrant for another. *Hill v. California*, 401 U.S. 797, 802-804 (1971).

Petitioner has not alleged any facts from which the Court can infer that Officer Patterson lacked a reasonable and good faith belief that Petitioner was in fact Anthony Moseley. There is no allegation that Officer Patterson lacked reasonable and reliable alias information upon which to base his arrest pursuant to the outstanding warrant, which was discovered during a routine computer check during a traffic stop. In Illinois, a police officer is not obligated to accept as true a suspect's statements of mistaken identity or denials. *People v. Dillon*, 102 Ill.2d 522, 468 N.E.2d 964 (1984). Courts long have recognized that "aliases and false identification are not uncommon" among fugitives from justice. *Hill v. California, supra*, at 803. Sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment. *Hill v. California, supra*, at 804. Petitioner has conceded that there was a valid arrest warrant for the suspect Anthony Moseley; consequently, there was probable cause for Anthony Moseley's arrest. This Court in *Baker v. McCollan, supra*, and the Illinois Supreme Court have held that an arrest pursuant to that warrant is made with probable cause. *People v. Gwin*, 49 Ill.2d 255, 274 N.E.2d 43 (1971); *People v. Cunningham*, 130 Ill.App.3d 254, 473 N.E.2d 506 (1984).

Petitioner's reference to *Arkansas v. Sanders*, 442 U.S. 753 (1979) is misplaced, misleading, and wholly out of context. *Sanders* involved a warrantless search of luggage taken from a properly stopped automobile. *Jenkins v. Rafferty*, 618 F.Supp. 30 (D. N.J. 1984), relied upon by Petitioner, involved a "Richard Roe" warrant, a facially invalid warrant, not a facially valid warrant used to arrest the wrong person. Similarly, in *United States v. Doe*, 703 F.2d 745 (3d Cir. 1983), an invalid "John Doe a/k/a Ed" warrant was involved. *Steagald v. United States*, 451 U.S.

204 (1981), cited by the Petitioner, is not on point as it involved the "narrow issue" of whether an arrest warrant is adequate to protect the Fourth Amendment interests of persons not named in the warrant, when their homes are searched without their consent and in the absence of exigent circumstances. *Id.* at 212. *West v. Cabell*, 153 U.S. 78 (1894), relied upon by Petitioner, while an exciting tale of a Texas marshal's pursuit of an outlaw through the Old West, should be considered an anachronism in today's age of computerization and telecommunications, however, it remains a leading case where the right person is arrested under the wrong warrant. *See, Gero v. Henault*, 740 F.2d 78, 83 (1st Cir. 1984).

II.

EVEN IF AN ISSUE WORTHY OF THE GRANTING OF A WRIT OF CERTIORARI PURSUANT OT THIS COURT'S RULE 17 EXISTED, RESPONDENTS ARE NOT LIABLE TO PETITIONER AS A MATTER OF LAW.

This Court has rejected Petitioner's contention that he was deprived of liberty without due process when he was held in the City of Harvey lock-up for less than 24 hours. *Baker v. McCollan*, 443 U.S. 137, 143-144 (1979). In that case, McCollan's section 1983 claim against Baker did not relate to his initial arrest, but, rather, to an alleged "intentional failure to investigate and determine that the wrong man was in prison". 443 U.S. at 143. The gravamen of McCollan's action was "simply that despite his protests of mistaken identity, he was detained in the Porter County jail [for three days, until] the validity of his protests was ascertained." 443 U.S. at 143-144. Writing for the majority of the Court, Justice [now Chief Judge] Rehnquist stated:

> "Whatever claims this situation might give rise to under state tort law, we think it gives rise to *no claim* under the United States Constitution . . . [W]e are quite certain that a detention of three days over a New Year's weekend does not and could not amount to . . . a deprivation [of liberty without due process of law]." 443 U.S. at 144-145 (Emphasis added).

This Court's majority further stated that McCollan's innocence of the charge contained in the warrant was "largely irrelevant to his claim of deprivation of liberty without due process of law. The Constitution does not guarantee that only the guilty will be arrested." 443 U.S. at 145.

This Court in *Baker* further stated that the "manifold procedural protections afforded criminal defendants under the Bill of Rights [are not] 'without limits.' (citation) Due process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person." *Id.*

In the instant case, Petitioner was released by the City of Harvey to the custody of the Cook County Sheriff's deputies on the afternoon following his arrest; Petitioner was released on bond on the following afternoon. Petitioner was afforded due process of law by the reasonable division of functions between law enforcement officers and judicial officers, as was recognized by this Court in *Baker*. This Court in *Baker* also recognized at 145-146:

> "a sheriff executing an arrest warrant is [not] required by the Constitution to investigate independently every claim of innocence. . . . Nor is the official charge with maintaining custody of the accused named in the warrant required by the Constitution to perform an error-free investigation of such claim. The ultimate determination of such claims of innocence is placed in the hands of the judge and the jury."

Petitioner has conceded that there is no remedy under state law in the circumstances of this action because of the broad tort immunities that law enforcement officers in Illinois enjoy. *Wilson v. Hunk*, 51 Ill.App.3d 1030, 367 N.E.2d 478 (1977); ILL.REV.STAT. ch. 85, pars. 2-202 to 2-205.

CONCLUSION

The Petition for a Writ of Certiorari to the Seventh Circuit Court of Appeals should be denied.

Respectfully submitted,

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